

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

JOHN ALLEN LEDBETTER,

Petitioner,

vs.

WARDEN PALMER, et al.,

Respondents.

Case No. 3:07-CV-00457-LRH-(VPC)

**ORDER**

In this habeas corpus action pursuant to 28 U.S.C. § 2254, the Court dismissed the action without prejudice because Petitioner did not pay the filing fee and did not apply to proceed in forma pauperis. Order (#2). Petitioner has submitted a Notice of Appeal (#4).

To appeal the denial of a petition for a writ of habeas corpus, Petitioner must obtain a certificate of appealability, after making a “substantial showing of the denial of a constitutional right.” 28 U.S.C. §2253(c).

Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy §2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong. The issue becomes somewhat more complicated where, as here, the district court dismisses the petition based on procedural grounds. We hold as follows: When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

1 Slack v. McDaniel, 529 U.S. 473, 484 (2000); see also James v. Giles, 221 F.3d 1074, 1077-79 (9th  
2 Cir. 2000).

3       Petitioner must take care of the filing fee before the Court can proceed with his habeas  
4 corpus petition. By dismissing this action without prejudice, the Court gave Petitioner the  
5 opportunity to correct his omission. Reasonable jurists would not find the Court's conclusion to be  
6 debatable or wrong.

7       IT IS THEREFORE ORDERED that a certificate of appealability is **DENIED**.

8       DATED this 27<sup>th</sup> day of December, 2007.

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LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE